

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Tony Martin Caine, Jr.,

Civil No. 15-14 (DWF/BRT)

Petitioner,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

State of Minnesota,

Respondent.

The above matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Becky R. Thorson dated April 27, 2015. (Doc. No. 15.) The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference.

No objections have been filed to that Report and Recommendation in the time period permitted, which required objections to be filed by May 11, 2015. However, on May 26, 2015, Petitioner Tony Martin Caine, Jr. (“Petitioner” or “Caine”) filed a self-styled appeal (Doc. No. 16) and application for certificate of appealability (“COA”) (Doc. No. 17) with this Court. In these documents, Petitioner appears to request the ability to appeal Magistrate Judge Thorson’s Report and Recommendation, and perhaps also this Court’s adoption of that recommendation, to the extent that it recommends that Petitioner’s habeas petition be dismissed. Petitioner appears to assert the same arguments made in his habeas petition relating to ineffective assistance of counsel, abuse of discretion by the state trial court, and failure to hold an evidentiary hearing by the state

court. (*See* Doc. No. 17.) Because Petitioner is *pro se*, the Court considers these filings.

In the Report and Recommendation, Magistrate Judge Thorson recommends that Respondent's motion to dismiss be granted and that Petitioner's federal habeas petition be dismissed with prejudice because it is time-barred. (*See* Doc. No. 15.) Further, the Magistrate Judge recommends that no COA be granted in this case "because Caine's petition is clearly barred under AEDPA's one-year statute of limitations, such that reasonable jurists could not debate the matter." (*Id.* at 5.)

The Court agrees with the Magistrate Judge. Despite Petitioner's arguments relating to his conviction, the issue before the Court is the timeliness of Caine's habeas petition. Petitioner argues that reasonable jurists could debate his claims relating to ineffective assistance of counsel and failure to provide evidentiary hearings, but the issue is the timeliness of Caine's Petition and the timeliness issue cannot be disputed. Quite simply, even if Petitioner's arguments were accepted as true, the fact remains that Caine's petition was substantially untimely because the statute of limitations had been expired for a number of years by the time Caine filed his § 2254 petition. (*See* Doc. No. 15 at 4-5.) Further, as Magistrate Judge Thorson stated, "reasonable jurists could not debate the matter." (*Id.* at 5.) Consequently, the Court adopts the Magistrate Judge's Report and Recommendation in full and declines to grant a COA in this matter.

Specifically, a § 2254 petitioner cannot appeal an adverse ruling on his petition unless he is granted a COA. 28 U.S.C. § 2253(c)(1). A COA may only issue if the

petitioner “has made a substantial showing of the denial of a constitutional right.”

28 U.S.C. § 2253(c)(2). For claims rejected on procedural grounds without reaching the underlying constitutional claims, this standard demands a showing “at least” that both, “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right *and* that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (emphasis added). For the reasons previously outlined, reasonable jurists would not find it debatable whether the Court is correct in its procedural ruling—that is, that the statute of limitations had expired before Caine filed his habeas petition.

Therefore, the Court declines to grant a COA in this matter.

Thus, based upon the Report and Recommendation of the Magistrate Judge and upon all of the files, records, and proceedings herein, the Court now makes and enters the following:

ORDER

1. Magistrate Judge Becky R. Thorson’s April 27, 2015 Report and Recommendation (Doc. No. [15]) is **ADOPTED**.
2. The State’s motion to dismiss (Doc. No. [8]) is **GRANTED**;
3. Caine’s petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. No. [1]) is **DISMISSED WITH PREJUDICE** as time-barred.
4. Caine’s Notice of Appeal (Doc. No. [16]) and Application for Certificate of Appealability (Doc. No. [17]) are denied.

5. No certificate of appealability is granted in this matter.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: July 1, 2015

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge